IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

TUESDAY, THE FIRST DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE SRI DEVINDER GUPTA,THE CHIEF JUSTICE

and
THE HON'BLE MR JUSTICE B.SESHASAYANA REDDY

WRIT APPEAL NO : 2144 of 2004

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 29/11/2004 in WP NO : 21720 OF 2004 on the file of the High Court.)

Between:

Jaypeem Granites Private Limited,
having its registered office at 6-3-953/72,
Naveen Nagar, Hyderabad-500 004,
rep., by its Managing Director Mr.Harvesh Marwaha,
S/o late J.P.Marwaha, aged 44 years,
R/o 101, Pearl Point Apartment, Erramanzil, Hyderabad.

..... APPELLANT

AND

1 Andhra Pradesh Industrial Infrastructure Corporation,
an undertaking of Government of Andhra Pradesh, a Company
registered under the Companies Act, 1956, having its registered office
at 5-9-58/8, Parishrama Bhavan, Fateh Maidan Road,
Hyderabad-028, rep., by its senior Manager Mr.K.Narasimha rao
2 Office of the Senior Manager (E),
Andhra Pradesh Industrial Infrastructure Corporation,
Mr.K.Narasimha Rao, IE., Sanathnagar, Hyderabad-500 018.
3 Sree Tirumala Srinivasa Casting Private Ltd.,
Shed No.D-58, Phase-V, I.D.A.Jeedimetla,Hyderabad.

.....RESPONDENTS

Counsel for the Appellant: MR.M.S.SRINIVASA IYENGAR

Counsel for the Respondent Nos.1 and 2: MR.JANARDHAN RAO KOTAMA RAJU

The Court at the stage of admission made the following ORDER:

ORAL ORDER: (per the Hon'ble the Chief Justice)

The writ petitioner is the appellant before us who was the successful bidder in an auction conducted pursuant to an order passed for recovery of the amount against the 3rd respondent. Ultimately, the sale certificate was issued in favour of the petitioner-appellant on confirmation of sale. While so, the 1st and 2nd respondents served a notice on the 3rd respondent on 18.11.2004 to show cause within 15 days from the date of receipt of the notice as to why the allotment of the shed should not be cancelled duly determining the Lease-cum-Sale Agreement dated 26.10.1992 forfeiting the amount paid towards the use and occupation of the premises and to resume possession of the same. A copy of the said show cause notice was marked to the present petitioner-appellant. It is needless to add that the petitioner-appellant, pursuant to the confirmation of sale and issuance of sale certificate stepped into the shoes of the 3rd respondent. But, the 1st and 2nd respondents were not parties to such proceedings before the Debt Recovery Tribunal or in the auction proceedings. Respondents 1 and 2 are separate parties who had allotted the shed to the 3rd respondent under Lease-cum-Sale Agreement which prohibited the 3rd respondent from encumbering the shed or any part thereof without the consent of the 1st and 2nd respondents. Therefore, the 1st and 2nd respondents in the said show cause notice served upon the 3rd respondent pointed out that they are not bound by the sale conducted during the recovery proceedings pursuant to which the petitioner-appellant has been declared as the successful bidder. Questioning the said show cause notice, the writ petition was filed by the petitioner-appellant, which has been dismissed by the learned single Judge and this appeal is against the said order.

Learned counsel for the appellant submits that the remedy of respondents 1 and 2, if any, was to submit objections before the Debt Recovery Tribunal under the Income Tax (Certificate Proceedings) Rules 1962 which have been made applicable for the sales to be conducted for recovering the amount awarded by the Debt Recovery Tribunal. Therefore, notice issued by 1st and 2nd respondents is bad in law. The petitioner-appellant had got title in the property and the same cannot be deprived of

pursuant to the show cause notice.

The aforementioned submission made on behalf of the appellant was turned down by the learned single Judge and in our view, rightly so. To the show cause notice appropriate reply, has to be given by the 3rd respondent as well as by the appellant to whom a copy of the show cause notice has been marked and there is no reason why in case the reply to show cause notice is submitted either by the 3rd respondent or by the appellant, the same will not be considered by respondents 1 and 2 sympathetically in the given facts and circumstances of the case. Respondents 1 and 2 should take into consideration the changed circumstances and find out the viability to protect their own rights as also to ensure that no prejudice is caused to the appellant who has paid sale consideration in a pubic auction. On submission of reply by the appellant to the show cause notice, appropriate decision has to be taken by respondents 1 and 2. If the appellant feels aggrieved by the said decision, he can avail his appropriate remedy in accordance with law. Since the petitioner-appellant has appraised this Court that he has not filed the reply to the show cause notice, we direct that in case the replies to the show cause notice are submitted within two weeks before respondents 1 and 2, the same will be duly considered by them in accordance with law.

The appeal is accordingly disposed of.

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DEVINDER GUPTA, CJ

Dated 01..03..2005

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B.SESHASAYANA REDDY

msv

To

1 The Senior Manager, Andhra Pradesh Industrial Infrastructure

Corporation, O/o 5-9-58/8, Parishrama Bhavan, Fateh Maidan

Road, Hyderabad-028,

2 The Senior Manager (E),

Andhra Pradesh Industrial Infrastructure Corporation,
Mr.K.Narasimha Rao, IE., O/o (E), Sanathnagar, Hyd-500 018.

3 2 CD copies.